



EGERTON UNIVERSITY  
**FOLLAP**  
Faculty of Law Legal Aid Project

# NEWS LETTER

Volume 3, Issue 2

October / 2022



## A FOCUS ON ALTERNATIVE JUSTICE SYSTEMS

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The road to the  
Nakuru AJS project



Constitutional  
provisions on AJS



Resolving land  
disputes involving  
women in Kenya



Why journalists should  
tell the AJS story





# **VISION**

Justice and equality for all

# **MISSION**

Promotion of access to  
justice for the poor and  
marginalized to claim their  
rights

# OBJECTIVES

Enhancing Access to Justice  
through Legal Aid on the  
following:

Family Disputes

Children Cases

Land Rights

Criminal Cases

Matters of Public Interest

Governance and Public

Administration Issues

# EDITORIAL

The story of alternative justice systems (AJS) is partly the story of going back to our roots and asking ourselves how our forefathers solved their disputes then after picking the best practices, applying them in the modern-day contexts we live in.

It is in a sense, what Ngugi wa Thiong'o referred to as 'decolonising the mind' – a refreshing journey of re-booting our thinking on issues around access to justice outside the formal court system as we have come to know it.

It is about amplifying the message that indeed there can be justice in the other rooms over and above courtrooms, and that the corridors of justice need to be conceptualised as open spaces with much more players than those we are used to.

Dear FOLLAP magazine reader, in this edition we share these and many other thoughts on AJS.

Enjoy the read!

## Article 159-2-c:

**In exercising judicial authority, the courts and tribunals shall be guided by the following principles:** alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted.

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## PROJECT TEAM

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## Message from the Project Team Leader



*Dr. Ruth Aura, FOLLAP Team Leader at a past function. FOLLAP is part of the AJS journey in Nakuru.*

FOLLAP is one of justice sector stakeholders in Nakuru county. Through our clarion call of 'Taking law to the People', we envision a community where residents are much more at peace as their justice needs are satisfied without undue delay.

As such FOLLAP has been part of the AJS journey in Nakuru. We have been part of the discussions that eventually gave birth to the AJS County Action Plan and to date we play a key role in the implementation of the plan. Apart from having representation in the Nakuru County Working Group on AJS, one of our students is a volunteer at the AJS Secretariat.

This year, in collaboration with the Judiciary and the AJS Working Group, we have hosted at least two forums to sensitise members of the community on AJS. We are delighted by the kind of responses we received during the forums that showed the AJS project is vital in the delivery of justice for our people.

I wish to extend our gratitude to the European Union and UNDP Amkeni Wakenya for the support they have extended us over the years.

To the communities we serve, I hope that the AJS project will continue bringing justice closer to you and provide lasting solutions to your justice needs.



## The role of AJS in the Social Transformation through Access to Justice' Vision for the Judiciary

*Adapted from the speech of Chief Justice, Hon. Martha Koome during the launch of the AJS suit and AJS action plan at the Nakuru Law Courts on May 16th, 2022.*

The vision for the Judiciary lays emphasis on access to justice; particularly on the need to embrace a multi-door approach to the delivery of justice.

What this means is that the Judiciary is keen to promote access to alternative mechanisms of access to justice beyond the courts. This is aimed at ensuring that litigants have various options in redressing social grievances.

I consider AJS beneficial because it is closer to the people, more affordable, easier to access, familiar, and less bureaucratic. It also serves as a form of restorative justice. In addition, due to its participatory nature, it ensures more social inclusion.

It also prevents injustice and reduces harm suffered by people by focusing on root causes of injustice and on justice needs of entire communities and societies rather than just individuals. Thus, the launch of the Nakuru County AJS Action Plan is an additional step geared towards the realization of the goal of having in place an accessible, efficient, cost-effective, and expeditious system of justice.

AJS aids in achieving the goal of providing access to justice for all. It is instrumental in relieving the Courts in terms of easing the burden of dispute resolution. Further, it puts people at the center of justice systems and moves from justice for the few to justice for all.

It also aids Judiciary's vision by dismantling the systemic and informal barriers to access justice, which include high costs of litigation, delays in hearing and determination of cases, the problem of backlog of cases, perceptions of corruption, and geographical distance to court stations.

Everyone must have an equal opportunity to

access justice and the Judiciary is at the fore in widening the doorways of justice. This has the dual effect of a stronger, more efficient Judiciary and an empowered citizenry.

It is in this context that we are launching the Nakuru County AJS Action Plan. We are relying on Nakuru County to show the Judiciary and the entire country the utility and way forward on how the AJS structures can be harnessed to ensure accessible, fair, and expeditious delivery of justice.

I, therefore, urge Kenyans in general and the residents of Nakuru County to make use of the diverse menu of dispute settlement processes and options available to them including the AJS mechanism. By embracing them, the public will resolve their conflicts in an efficient way, strengthen social harmony, and boost state stability.

To show the Judiciary's commitment to the multi-door approach to access to justice, we will be giving room in our court buildings across the country to AJS as we have done in Nakuru Law Courts.

Justice is a shared responsibility. This fact is reinforced by Article 6 of the Constitution which provides for Devolution and Access to Services in Kenya. It commands that Government entities in the National and County Governments must conduct their mutual relations based on consultation and Cooperation.

Furthermore, the realisation of the right to access to justice in Article 48 of the Constitution is an obligation of all state organs. Thus, there's need to embrace the constitutional imperative of cooperative governance and in so doing enhance access to justice for Kenyans.

Given that delivery of justice to Kenyans

is a shared obligation which will be made possible by a coordinated, multi-stakeholder approach that is anchored on the need to open more avenues of access to Justice, I see an opportunity for the leaders and the people of Nakuru County to partner with the Judiciary at the sub-county (Constituency) level in delivery of judicial services.

County Governments, County Assemblies, and other structures at the local level like the National Government Constituencies Development Funds (NG-CDF) are essential pillars to the delivery of justice to every Kenyan.

Due to resource constraints, the Judiciary cannot realise the aspiration of having a High Court in every County and Magistrate's Court in every sub-County immediately on our own. Hence, in several Counties across the country, we have partnered with the County Governments and the National Government Constituencies Development Funds to avail land and build court premises. In furtherance of this goal, I welcome discussions and initiatives aimed at collaboration between the County Government and Constituency leadership with the Judiciary.

I must also offer gratitude to our development partners for their continued support of Judiciary initiatives. I call for continued solidarity in our collective mission to enable access to justice by fostering deeper partnerships and collaborations.

The Judiciary sees itself as the custodian of the rule of law and as an enabler of people-centered social transformation. As such, novel and game-changing approaches to justice will feature more centrally in our operations.

*(Adapted by Kioko Kivandi and Jemimah Aluda)*



*The Egerton University Faculty of Law Legal Aid Project (FOLLAP) is Supported by European Union and UNDP through Amkeni Wakenya*

## Constitutional provisions on AJS

*By Kirimi Mutuma*

The Constitution of Kenya (2010) has various provisions that advocate for alternative justice systems (AJS). They include the following:

**Article 10:** Provides for national values and principles of governance which include human dignity and social justice. These two are vital factors in promotion of AJS.

**Article 27 (1):** Guarantees equality before the law and the right to equal protection and equal benefit of the law. This at times is unachievable in litigation. AJS comes in and to a significant extent guarantees equality to parties in a dispute.

**Article 44:** Provides for the right to use any language as well as participation in the culture by the people. By allowing people to practice their culture as well as their language, literally makes it lawful for the people to resort to community-based mechanisms in pacification whenever disputes arise.

**Article 48:** Requires that the State promotes and ensures that all citizens access justice. The State therefore, has the obligation to put in place practical mechanisms that promote justice, one of which is AJS.

**Article 50:** Entitles an accused person to a fair hearing. It requires that the hearing be held fairly and publicly before a court or an independent and impartial tribunal or body.

**Article 159:** This obliges the judiciary to resort to, where necessary and consistent with the law, alternative dispute resolution alongside the traditional justice systems to facilitate access to justice. Clause(2)(c) of Article 159 proceeds to outline the various forms of alternative dispute resolution: reconciliation, mediation, arbitration and, traditional dispute resolution (which must be used consistently with the law).

**Article 174 (d):** The constitution entitles communities with the right to manage their

affairs, reserving mandate for lawful resolution of conflicts to the respective communities. Merits of Alternative Justice System.

As opposed to litigious proceedings, the application of alternative justice system (AJS) is and has proved to be more effective and efficient in dealing with disputes.

AJS is a cheaper means where parties to a dispute will avoid paying huge legal fees required in litigation.

AJS is almost free, and when there are costs, one would find such affordable, reasonable and cheaper than is the case in the formal case process.

Furthermore, the accessibility of AJS is no match for the formal court system. One does not necessarily have to travel for long and tedious distances to simply access the nearest court. In AJS, the solution is always at one's doorstep.

The adoption of AJS has also made it easier for the formal courts to hear and speedily determine other cases. The backlog of cases has significantly been reduced by the fact that most of the cases are now heard and conclusively determined under AJS.

Realists argue that in most instances, the written law is befogged from seeing and perceiving the reality. It is a strict inflexible law whose inclination to the lived realities of the people is seldom.

AJS is the true opposite of this. It reflects the reality, puts into consideration all the parties, not with the sole intention of finding anyone guilty but at times, simply aimed at restoration of peace between the conflicting parties.

At the end of the process, the parties come to a common understanding amicably, making it more friendly than in litigation where most likely there is dissatisfaction consequently escalating the tension.

Crystal clear is the fact that the merits of AJS by all means outweigh those of formal litigation. Much as the clarity of this statement is vivid and undebatable, critics of AJS will term it as discriminative against women, children and the marginalized. Others will argue that there are no sufficient mechanisms to enforce AJS, inadequacy of funds and other reasons, a few which may be true while others are not. In a nutshell, Alternative Justice System has had and hitherto has significant impact in the justice system. Its efficiency, expediency, accessibility and flexibility are among other advantages of the system over the litigation process.

However, there remains an onerous obligation for the government as well as other stakeholders to put in place efforts that strengthen the implementation and effectiveness of AJS.

Creation of public awareness through mass education would and seems to be among the best ways of sensitizing the citizens on the need to cherish AJS mechanisms. There also ought to be financial support to AJS mechanisms among other means to enhance the adoption and efficient application of Alternative Justice System.

AJS is one of the best routes we can take to the land of justice. It should be cherished, embraced and adopted, if justice is to be achieved.

*Kirimi Mutuma is a 3rd Year LLB student at Egerton University*



"QUOTE"

# The Place of AJS in Resolving Land Disputes Involving Women and In Kenya

By Ivy Namarome

Our ancestors were so keen on summoning wrongdoers before the council of elders and directing them to bring a cock or slaughter a bull, which would appease the elders and afterwards, they would wash that down with a drink before listening to the case at hand. Later on, the conflicting parties would be advised to shake hands to symbolize peace. This is the best illustration that indeed, alternative justice systems (AJS) have worked before, and would work today. Retired chief Justice Willy Mutunga shocked many Kenyans when he urged them to solve their disputes through witch doctors rather than through courts. This article highlights on the place of women in land disputes and the role that AJS plays in ensuring that access to justice is more than just a constitutional provision.

The Constitution of Kenya (2010) in Article 48 gives the state a responsibility to ensure that all people access justice and ensure that any fee required shall be reasonable and shall not impede access to justice.

Article 60 of the constitution provides for equitable access to land and security land rights. Article 159(2)(c) of the Constitution further provides that alternative forms of resolving disputes be promoted. These include mediation, arbitration and traditional dispute mechanisms. The beauty of AJS is that it does not bar one from seeking legal redress in the event that it fails.

Land in Kenya is a sensitive topic, and as much as courts make efforts to settle the disputes, the answers lie with the families and communities of the land owners.

The above constitutional provisions are the light at the end of the tunnel that Kenyan women have been waiting upon to shine on their rights. Despite the law on succession recognizing both boys and girls as equal children, girls are discriminated against in land

sharing. Women are helpless in such cases, as the communities have programmed them to believe that they eventually get married off and will not need the land afterwards. They are only given small portions of land after it has been divided to their brothers and male relatives. There are devastating effects that come with the inability of women to inherit and own land. Poverty, disease and violence against women and children. There are instances where women are widowed and the relatives take the land title deeds and forcefully evict them. It is sad to note that these are groups of people who may not have the legal literacy to address such issues. In the event that they are aware of their rights, they do not have adequate funds to follow through litigation. There are those that have matters in court but have difficulty attending all proceedings due to the distance, harsh weather conditions in some areas and having to take care of their children.

AJS is a suitable mechanism in resolving land disputes as it involves traditional mechanisms that would give local elders the validation that would then smoothen their hearts and in return, they would rule that women be allowed to own land freely.

In addition, AJS saves on time and resources. The sessions would be less costly as opposed to enormous litigation fees. The time spent in court could also be redirected in developing land and other streams of income. Civil society organizations have come in to help women access justice in such situations.

In conclusion, the national anthem has a part that prays to God to grant us peace and liberty, and AJS is the peace and liberty that communities seek. It is a space that enables one party to win without the other party feeling like it has lost. This is a call to not only view AJS as an alternative means of enabling the access to justice when all else is lost, but instead, to take it up as the first resort especially in land disputes, and only turning to litigation when AJS has failed.

# Importance of the AJS

*Adapted from the AJS Framework Policy By Kevin Muiruri.*

**Reflects lived realities of Kenyans:** AJS reflects the lived realities of Kenyans and is an effective process for increasing access to justice for most Kenyans.

**Expands human rights and human autonomy:** AJS as a framework for expanding human rights and human autonomy: AJS is an important tool for expanding human rights. Because AJS is a lived reality, it changes and adapts to new circumstances and is capable of responding to legal changes and therefore adapts to human rights norms.

**A mode for doing justice differently and more effectively:** AJS accomplishes this in at least six ways – (i) it is not adversarial and is a form of restorative justice; (ii) it ensures more social inclusion since it is more participatory; (iii) it is more affordable; (iv) it has minimum formalities and technicalities and focuses on substantive justice; (v) it is more expeditious; and (vi) it is less adversarial and incorporates more creative remedies.

**An effective mechanism for the reduction of case backlogs and decongestion of Courts:** One of the main issues of the formal justice system in Kenya is the serious backlog of cases. Reducing backlog in the Courts is, therefore, one of the primary goals of the Judiciary. By dealing with appropriate disputes and actively preventing others from becoming active disputes, AJS reduces congestion of cases in Courts.

**A mechanism for social re-engagement with (and re-legitimizing) the State:** One of the transformative objectives of the Constitution is to re-legitimize the State by bringing Government closer to the people. Alternative Justice Systems enhance public participation in the justice system thereby re-engaging the people with the State.

**A mechanism for reconstituting the State**

**and the Citizen as part of the constitutional project to remake the Kenyan State:** AJS seeks to enhance the role of the State and Citizen as direct actors making contributions towards their civic autonomy. Most of the authority of AJS institutions is not derived from the powers delegated to the State by the people of Kenya, rather, it is derived directly from the people. Thus, AJS seeks to enhance the role of the State and the citizen as direct actors making contributions towards their civic autonomy.

**A site for reclaiming ossified customary norms and as a project to resituate the traditional as rational:** The AJS mechanism preserves and promotes cultures and prevents them from becoming “stale” and therefore fits into contemporary life.



*Ms. Valerie Kutima, FOLLAP Advocate attending to a client in a past event. AJS expands human rights and human autonomy*

## Why journalists should tell the AJS story

The justice conversation in Kenya is changing, thanks to Article 159 (2-C) of the Constitution (2010) which encourages the use of traditional or informal systems of dispute resolution among communities.

In reality though, these systems have existed for a long time. Their existence dates to pre-colonial days; they were in place even before the establishment of the formal court system. In every community in Kenya, there has always existed a system of solving disputes: through elders, through parties engaging each other directly, through the complainant resigning to fate (that statement of 'I leave it to God/gods to fight for me), or anything.

But simply, communities have not always rushed to the formal court system to solve every of their disputes. At times, the court is merely a course of last resort.

In 2017 a 'Justice Needs Survey' conducted by the Hague Institute for Innovation of Law established that only 5% of disputes in Kenya end up in the courts. A survey similar to this conducted in Nakuru in January this year showed that only 12.45% of Nakuru residents prefer the courts as their dispute resolution mechanism. The rest (87. 55%) prefer alternative justice systems (AJS).

Unfortunately, our tradition of telling the court story has also been about telling the story of the formal court system. It means that overtime, we have been telling a skewed justice story: the story involving the bar, the bench, prosecutors, how specific sections of the law have been broken, very formal resolutions, etc. This is the story of the 5% nationally and 12% for Nakuru county.

From a journalistic perspective, Article 159-2-C aims to reverse this trend by reclaiming the position of the story of the disputes handled by the informal 'court' structures. It is about the recognition that there is justice, not just along

the corridors of justice but along the streets as well, what other thinkers have referred to as justice in other room(s).

This view aims at expanding the public sphere on the justice discourse in the country by recognizing a multiplicity of players, albeit new players, in the justice conversation. It also seeks to accelerate the implementation of Art. 48 of the Constitution on access to justice while holistically pushing for a social transformation of justice in the country.

To achieve this the media ought to play a key role in accelerating access to information on AJS. In the past limited access to information has in itself been identified as a barrier to accessing justice for many people in the country.

The Nakuru justice needs survey also established that limited information is the leading barrier to accessing justice in the county, a situation that is by all means existent in many counties.

Journalists should tell the AJS story for a myriad of reasons but mainly because it is the new court story, it is a story of reconciliation, it is a story of social transformation, it is a story of Human Rights, it is a conflict sensitive story, and lastly is the story of the now and of the future.

*By Kioko Kivandi*



**Dr. Ruth Aura, FOLLAP Team Leader  
addressing a women's forum.  
Journalists should tell the AJS story  
because it is the new court story**

## The road to the Nakuru AJS project

By Kioko Kivandi and Florida Musi

The Nakuru AJS project officially started on 16th May, 2022 with the launch of the Nakuru County AJS Action Plan and the Court Annexed AJS Suit (Ukumbi). The project has been successful recording at least 100 cases so far. Here we trace how the journey started and where it is today.

Date	Event
October 2010	Kenyans vote for and inaugurate the new constitution. Among its provisions is Article 159(2)(c) which recognised the need to promote alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms.
4th March, 2016	The then Chief Justice, Hon. (Dr) Willy Mutunga appointed a Taskforce on Alternative Justice Systems to evaluate various Traditional, Informal and Other Mechanisms Used to Access Justice in Kenya (Alternative Justice Systems) and develop a national policy on Access to Justice. Hon. Justice Prof. Joel Ngugi, a Judge of the High Court at the time, is picked to lead the taskforce.
April 2020	The term of the taskforce comes to an end having conducted research, field visits, and extensive consultations with stakeholders. The work of the Taskforce resulted in a draft policy dubbed Justice as Freedom: Traditional, Informal and Other Mechanisms for Dispute Resolution in Kenya – which serves as a roadmap for implementation and interventions to establish Alternative Justice Systems (AJS).
27th August 2020	The AJS policy is launched
November 2021	Representatives of the Nakuru Court Users Committee (CuC) visit Isiolo for a benchmarking mission as well as a conference on AJS. At the conference, the team gets to learn not only from Isiolo but from Othaya, Kajiado and Samburu regions on matters AJS. At the conference a working group is constituted from the larger CuC comprising justice stakeholders from different sectors in the county.
January – March 2022	The Nakuru AJS Working Group in collaboration with the National Steering Committee on AJS conducts a county-wide justice needs survey. The survey establishes that only 12.45% of Nakuru residents prefer the courts as their dispute resolution mechanism. The rest (87. 55%) prefer alternative justice systems (AJS). They also develop a county action plan on AJS which presents a 5-tier model with the CuC at the top of the governance hierarchy followed by the working group, a CuC AJS Secretariat (domiciled at the Nakuru Law Courts), the AJS Mechanisms (both Autonomous Affiliated and Court Annexed) and finally the AJS Unaffiliated Mechanisms.
May 16th 2022	The Nakuru County Action Plan and Nakuru Court Annexed AJS Suit (Ukumbi) are launched at the Nakuru Law Courts by the Chief Justice Hon. Martha Koome with a focus on the role of AJS in the Social Transformation through Access to Justice Vision for the Judiciary
As at 31st October, 2022	A total of 100 cases are recorded at the AJS Registry: Criminal (68); Succession Matters (16); Environment and Land (6); Division of Matrimonial Property (4); Children, Civil and Judicial Review (1 case each). 50% of the criminal and succession cases have been successfully concluded. The child matter has also been successfully concluded as well as one matrimonial case. Only one succession and one division of matrimonial property cases were unsuccessfully concluded. The rest are active including the 3 murder cases.





Justice Professor Joel Ngugi National AJS committee chair addressing participants at a FOLLAP forum on AJS.



FOLLAP team members pose with their certificates after being trained on mediation by the mediation training institute.



Participants at the first national conference on AJS held at CUEA in June, 2022.



Members of the clergy from Nakuru pose for a group photo after being trained on AJS



FOLLAP coordinator Samuel Kimani (centre) with other participants at the first National Conference on AJS.



Justice Professor Joel Ngugi National AJS committee chair during a training for the clergy in Nakuru on AJS



An M&E meeting between FOLLAP team members and UNDP team at Egerton University.



Florida Musi, FOLLAP Legal Assistant serves a client during a Legal Aid Clinic.







# FOLLAP

Faculty of Law Legal Aid Project

*Taking Law  
to the People*

Enhanced Access to justice for the poor and **marginalized**

*We envision Justice and Equality for all. Key strategies for this vision are removal of barriers for access to justice among the target groups, empowerment of the community to refer cases of human rights violations as well as to build capacity of community justice systems to operate effectively and efficiently.*



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